



**NOAA  
FISHERIES**

**WEST  
COAST  
REGION**

# Rescue/Salvage of ESA-Listed Fish

Projects that include in-stream work may encounter fish listed as threatened or endangered under the Endangered Species Act (ESA) during work area isolation. Often, it is desirable to remove any trapped fish from the isolated work area to avoid and minimize impacts to the fish. The goal is to capture the fish, using non-lethal methods, and then release or relocate them downstream with minimal handling. These capture and relocation activities are often referred to as rescue/salvage. Examples of projects that may require rescue/salvage include habitat restoration, bridge repairs, culvert replacement, repairs to existing structures, building new structures, and more.

Many of the salmon and steelhead populations in Washington, Oregon, Idaho, and California are listed as threatened or endangered under the ESA. Capturing and handling ESA-listed fish is a form of ‘take’<sup>1</sup>, even if it is to the fishes’ benefit, and is prohibited under federal law unless specifically authorized or permitted by NMFS. There has been some confusion regarding how rescue/salvage activities should be authorized, resulting in unauthorized take as well as inappropriate application of the 4(d)-Limit 3 take exemption. The purpose of this fact sheet is to clarify how entities should obtain the appropriate authorization for rescue/salvage activities. Options for receiving the necessary authorization or permit are outlined below. The option you choose depends, in part, on whether your project has a federal nexus; a federal nexus is when the project requires a federal permit or approval (e.g., a Corps permit), involves federal funding, use of federal lands, or a federal program.

<sup>1</sup> From Section 3(18) of the Federal Endangered Species Act: “The term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

*NOAA photographs: background, Matt Newbit, right, Paul Olsen*



**West Coast Region Section 7 contacts:**

[www.westcoast.fisheries.noaa.gov/permits/reg\\_sec\\_7\\_contacts.html](http://www.westcoast.fisheries.noaa.gov/permits/reg_sec_7_contacts.html)



NOAA Fisheries photograph by Tom Good

## How to Comply with the Endangered Species Act for Rescue/Salvage Activities

**Option 1** - ESA Section 7 consultation. If your project has a federal nexus, then you can complete an ESA Section 7 consultation with NMFS and be exempted from that take prohibition. SA Section 7 consultation. If your project has a federal nexus, then you can complete an ESA Section 7 consultation with NOAA Fisheries and be exempted from that take prohibition.

**Option 2** - ESA Section 10 Habitat Conservation Plan (HCP). NMFS will issue an incidental take permit to non-federal parties undertaking otherwise lawful projects that might result in the take of an endangered or threatened species. Application for an

incidental take permit is subject to certain requirements, including preparation by the permit applicant of a HCP. The HCP would outline ways of maintaining, enhancing, and protecting habitat needed to protect species during the course of ongoing activities. This option requires significant time from both the applicant and NMFS.

**Option 3** - 4(d) Limit 3. Federal, state, and other co-managers in the course of their regular work duties are exempt from the take prohibition (i.e., require no permit or other authorization) for threatened salmonid species when conducting any of the following actions: 1) aid a sick, injured, or stranded salmonid (rescue); 2) dispose of a dead salmonid; or 3) salvage a dead salmonid which may be useful for scientific study. This exemption only applies to unforeseen circumstances, and does not cover incidental take associated with planned or ongoing projects. Each entity acting under this limit is required to submit an annual report to NOAA Fisheries.

**Option 4** - 4(d) Limit 10. Routine road maintenance projects that do not have a federal nexus are exempt from the ESA take prohibitions for threatened salmonids provided that: 1) The activity constitutes routine road maintenance conducted by Oregon Department of Transportation employees (or their agents) that complies with ODOT's Transportation Maintenance Management System Water Quality and Habitat Guide; or (2) it is conducted by the employees or agents of a state, county, city, or port under a program that complies substantially with the ODOT Guide and has been determined to meet or exceed the protections provided by the ODOT Guide; or (3) it is conducted by the employees or agents of a state, county, city, or port in a manner that has been found to contribute to properly functioning condition.

## Fish Salvage may be conducted via the following methods:

**Electrofishing** – use of electricity to stun and capture fish that come within the electrical fields produced by two electrodes. Electrofishing is conducted using backpack units or via boat. Stunned fish are then collected with dip nets. Training is required to use electrofishing equipment and we recommend you follow the NMFS Backpack Electrofishing Guidelines [http://www.westcoast.fisheries.noaa.gov/publications/reference\\_documents/esa\\_refs/section4d/electro2000.pdf](http://www.westcoast.fisheries.noaa.gov/publications/reference_documents/esa_refs/section4d/electro2000.pdf).

**Seining** – mesh collection devices that trap fish by enclosing or encircling them. Fish are then sieved from the water by means of the mesh panels that comprise the seine. The bottom or lead line has lead weights strung or crimped onto it to weight the net. The top or float line includes cork, polystyrene foam, or plastic floats to keep the top of the seine near the water surface. The net is attached to wood or metal poles used by the seiners to handle the seine.

**Dip net** – small nets on wood or metal poles used to capture fish in confined spaces. Fish must be visible in order to confirm that the dip net has captured all fish in the enclosure.